IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.:	10/804,958	Confirmation No.: 9176
Applicant(s):	Chanh C. Vo et al.	
Filed:	03/19/2004	
Art Unit:	2883	
Examiner:	Dinh D. Chiem	
Title:	**OPTICAL TERMINATION PEDESTAL**	

Docket No.: HE0222
Customer No.: 21495

Mail Stop Appeal Brief – Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

An **APPEAL BRIEF** is filed herewith. Appellant encloses a payment in the amount of $540.00 as required by 37 CFR § 41.20(b)(2), and a payment in the amount of $130.00 for a One-month Extension of Time. If any additional fees are required in association with this appeal brief, the Director is hereby authorized to charge them to Deposit Account 03-3325, and consider this a petition therefor.

APPEAL BRIEF

(1) REAL PARTY IN INTEREST

The real party in interest is the assignee of record, i.e., Corning Cable Systems LLC, P.O. Box 489, 800 17th Street NW, Hickory, NC 28603.

(2) RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences to the best of the Appellant's knowledge.

(3) STATUS OF CLAIMS

Claims 1-4, 7-12, 17-21, 23, 24, 28, 29, and 31 were rejected on July 22, 2009.

Claims 5, 6, 13-16, 22, 25-27, and 30 were previously cancelled.

Claims 1-4, 7-12, 17-21, 23, 24, 28, 29, and 31 are pending and are the subject of this appeal.

(4) STATUS OF AMENDMENTS

All amendments have been entered to the best of Appellant's knowledge. The last amendments were filed together with a Request for Continued Examination filed March 27, 2008. No amendments have been filed after the Office Action mailed July 22, 2009.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

In the following summary, Appellant has noted where in the Specification certain subject matter exists. Appellant wishes to point out that these citations are for demonstrative purposes only and that the Specification may include additional discussion of the various elements, citations to which are not referenced below. Thus, the noted citations are in no way intended to limit the scope of the pending claims.

Independent claim 1 recites an optical termination pedestal (such as pedestal 20, Figures 1-8) defining an interior cavity (defined by pedestal 20 within housing 28, Figures 1-8) and comprising:

a pedestal base (such as pedestal base 30, Figures 1-8) (Specification, paragraphs 0019, 0025-0033, 0035, and 0037-0039);

a housing (such as housing 28, Figures 1-8) positioned over the pedestal base (Specification, paragraphs 0005-0008, 0019-0021, 0025-0035, and 0037-0039);

a distribution cable (such as distribution cable 26, Figures 1-8) received within the interior cavity (Specification, paragraphs 0024, 0026, 0028-0030, and 0034-0039);

at least one drop cable (such as drop cable 22, Figures 1-8) received within the interior cavity (Specification, paragraphs 0024, 0026, 0028-0030, and 0034-0039);

a plate (such as plate 38, Figures 1-8) secured to one of the housing and the pedestal base and operable for separating the interior cavity into a first compartment (such as first compartment 40, Figures 1-8) disposed within the housing and a second compartment (such as second compartment 42, Figures 1-8) disposed within the housing, wherein the first compartment and the second compartment are substantially free of a gel encapsulant material (Figures 1, 2, 7, and 8) (Specification, paragraphs 0007-0010, 0021-0023, 0027-0037, 0039-0041, and 0043); and

a means (such as connector ports 44, Figures 1, 2, 4, and 6; splice tray 48, Figures 1-3, 5, and 7; and/or connector adapter sleeve 68, Figure 8, or the equivalent thereof) for interconnecting at least one optical fiber (such as optical fiber 24, Figures 1-8) of the distribution cable to at least one optical fiber (such as optical fiber 24, Figures 1-8) of the drop cable, wherein the means for interconnecting is provided in the first compartment (Specification, paragraphs 0007, 0008, 0019, 0030-0032, and 0038-0040).

Independent claim 17 recites an optical termination pedestal (such as pedestal 20, Figures 1-8) defining an interior cavity (defined by pedestal 20 within housing 28, Figures 1-8) for interconnecting at least one terminated optical fiber of a distribution cable with at least one optical fiber of a fiber optic drop cable, the pedestal comprising:

a pedestal base (such as pedestal base 30, Figures 1-8) (Specification, paragraphs 0019, 0025-0033, 0035, and 0037-0039);

a housing (such as housing 28, Figures 1-8) positioned over the pedestal base (Specification, paragraphs 0005-0008, 0019-0021, 0025-0035, and 0037-0039);

a distribution cable (such as distribution cable 26, Figures 1-8) received within the interior cavity (Specification, paragraphs 0024, 0026, 0028-0030, and 0034-0039);

at least one drop cable (such as drop cable 22, Figures 1-8) received within the interior cavity (Specification, paragraphs 0024, 0026, 0028-0030, and 0034-0039); and

a plate (such as plate 38, Figures 1-8) secured to one of the housing and the pedestal base and operable for separating the interior cavity into a first compartment (such as first compartment 40, Figures 1-8) disposed within the housing and a second compartment (such as second compartment 42, Figures 1-8) disposed within the housing, wherein the first compartment and the second compartment are substantially free of a gel encapsulant material (Figures 1, 2, 7, and 8) (Specification, paragraphs 0007-0010, 0021-0023, 0027-0037, 0039-0041, and 0043).

Independent claim 28 recites an optical termination pedestal (such as pedestal 20, Figures 1-8) for use at a branch point in a fiber optic communications network, the pedestal defining an interior cavity (defined by pedestal 20 within housing 28, Figures 1-8) and comprising:

a pedestal base (such as pedestal base 30, Figures 1-8) (Specification, paragraphs 0019, 0025-0033, 0035, and 0037-0039);

a housing (such as housing 28, Figures 1-8) positioned over the pedestal base (Specification, paragraphs 0005-0008, 0019-0021, 0025-0035, and 0037-0039);

a plate (such as plate 38, Figures 1-8) secured to one of the housing and the pedestal base and operable for separating the interior cavity into a first compartment (such as first compartment 40, Figures 1-8) disposed within the housing and a second compartment (such as second compartment 42, Figures 1-8) disposed within the housing, the plate having at least one cable port (such as cable port 36, Figures 1, 2, and 6-8) for routing a distribution cable (such as distribution cable 26, Figures 1-8) into and out of the first compartment and wherein the first compartment and the second compartment are substantially free of a gel encapsulant material (Figures 1, 2, 7, and 8) (Specification, paragraphs 0007-0010, 0021-0023, 0027-0037, 0039-0041, and 0043); and

a means (such as connector ports 44, Figures 1, 2, 4, and 6; splice tray 48, Figures 1-3, 5, and 7; and/or connector adapter sleeve 68, Figure 8, or the equivalent thereof) for interconnecting a terminated optical fiber (such as optical fiber 24, Figures 1-8) of the distribution cable and an optical fiber (such as optical fiber 24, Figures 1-8) of a drop cable (such as drop cable 22, Figures 1-8) in one of the first compartment and the second compartment;

wherein the plate creates a splice closure within the pedestal without the use of a separate enclosure (Specification, paragraphs 0005, 0031, 0033-0035, 0037, 0039, and 0041).

Dependent claims 8, 23, 24, and 31 are argued separately. Claim 8 recites "wherein the plate comprises a mounting plate having at least one connector port mounted thereon." Claims 23, 24, and 31 all recite "wherein the means for interconnecting comprises at least one connector port mounted on the plate." Connector ports are discussed throughout the Specification, including paragraphs 0005, 0007, 0019, 0020, 0022, 0027-0029, 0031, 0033, 0035, 0040, and 0041. Examples of connector ports mounted on a plate can be seen in Figures 1, 2, 4, and 6 (connector ports 44).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1-4, 8, 11, 12, 17-21, 28, and 29 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,218,664 to O'Neill et al. (hereinafter "O'Neill") in view of U.S. Patent No. 6,434,313 to Clapp, Jr. et al. (hereinafter "Clapp").

2. Whether claims 7, 9, 10, 23, 24, and 31 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Neill and Clapp in view of U.S. Patent No. 5,649,042 to Saito et al. (hereinafter "Saito").

(7) ARGUMENT

A. Introduction

All of the elements of the pending claims are not shown in the prior art to sustain an obviousness rejection. In particular, neither O'Neill, Clapp, nor Saito, alone or in combination, can be considered to include a "pedestal base" with a "housing positioned over the pedestal base," as recited in independent claims 1, 17, and 28. In addition, O'Neill, Clapp, and Saito, alone or in combination, fail to disclose or suggest "a plate secured to one of the housing and the pedestal base and operable for separating the interior cavity into a first compartment disposed within the housing and a second compartment disposed within the housing," as recited in claims 1, 17, and 28.

Further, the Office Actions have failed to establish how the prior art discloses all the features recited in certain dependent claims. For example, claim 8 recites "wherein the plate comprises a mounting plate having at least one connector port mounted thereon." Claim 23, 24, and 31 all recite "wherein the means for interconnecting comprises at least one connector port mounted on the plate." None of the cited references teaches a connector port mounted on a plate. Thus, these claims are separately patentable.

As such, Appellant requests that the Board reverse the Examiner and instruct the Examiner to allow the claims for these reasons along with the reasons noted below.

B. Summary of References

1. U.S. Patent No. 5,218,664 to O'Neill et al.

O'Neill discloses a light waveguide splice closure having lifting handles for removing the closure end cap. O'Neill, Abstract. The light waveguide splice closure in O'Neill comprises a container having an end cap through which light waveguide cables may be inserted. O'Neill, col. 1, ll. 53-56. The container holds splicing means for placing light waveguides from the cables into optical communication with each other. O'Neill, col. 1, ll. 56-58. A unitary vessel of resilient material is placed between the end cap of the splice closure and the splicing means.

O'Neill, col. 1, ll. 58-60. This vessel holds the encapsulating waterblocking gel and has an open top with a flared resilient brim forming a seal with the interior of the container. O'Neill, col. 1, ll, 53-63.

The container 10 of O'Neill is closed by end cap 12, which has a metallic surface 25 within container 10. O'Neill, col. 2, ll. 33-35. Also mounted in container 10 is silicone rubber vessel 21, which is shaped in the form of a pail having an open top with a flared resilient brim 22. O'Neill, col. 2, ll. 35-38. In use, brim 22 is in contact with the interior surface of container 10 to form a seal. O'Neill, col. 2, ll. 38-39. Light waveguides in buffer tubes 23 must proceed through the closed bottom of vessel 21 in order to be spliced together in splice tray 24. O'Neill, col. 2, ll. 42-45. This is facilitated by a series of circular areas 26 in the bottom of vessel 21 of reduced thickness. O'Neill, col. 2, ll. 45-46. In actual use, vessel 21 will be filled up to surface 25 with an encapsulant which is a gel preventing access of water to splice tray 24; however, the encapsulant is omitted from the drawings in order for the interior of the splice closure to be viewed. O'Neill, col. 2, ll. 52-57.

2. U.S. Patent No. 6,434,313 to Clapp, Jr. et al.

Clapp discloses a splice closure that "includes a frame 13," which "has two side plates 15 that are spaced apart from each other, leaving a central cavity between them for receiving express fiber tubes." Clapp, col. 2, ll. 41-45. "Two forward end brackets 19 extend from side plates 15 for fastening an end cap 21 to the frame 13. End cap 21 is a cylindrical member having a plurality of apertures 23 for receiving fiber optic cables." Clapp, col. 2, ll. 52-56. The end cap 21 in Clapp is not a "plate" that separates an "interior cavity into a first compartment ... and a second compartment," as recited in claim 1. This is clear since Clapp discloses that a "housing 39 will slide over frame 13 and fasten to end cap 21, thereby enclosing main splice tray 17." Clapp, col. 3, ll. 33-35; see also Figures 1 and 2.

3. U.S. Patent No. 5,649,042 to Saito et al.

Saito discloses a "pre-connectorized loose tube cable." Saito, Abstract.

C. Legal Standards

1. For Establishing Anticipation

Section 102 of the Patent Act provides the statutory basis for an anticipation rejection and states *inter alia*:

> A person shall be entitled to a patent unless
> ***
> (e) the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language. . . . 35 U.S.C. § 102(e).

The Federal Circuit's test for anticipation has been set forth numerous times. "It is axiomatic that for prior art to anticipate under 102 it has to meet every element of the claimed invention." Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 1379 (Fed. Cir. 1986). This standard has been reinforced. "To anticipate a claim, a reference must disclose every element of the challenged claim and enable one skilled in the art to make the anticipating subject matter." PPG Indus. Inc. v. Guardian Indus. Corp., 75 F.3d 1558, 1577 (Fed. Cir. 1996) (citations omitted). Further, "a finding of anticipation requires that the publication describe all of the elements of the claims, arranged as in the patented device." C.R. Bard Inc. v. M3 Sys. Inc., 157 F.3d 1340, 1349 (Fed. Cir. 1998) (emphasis added and citations omitted).

2. For Establishing Obviousness

Section 103(a) of the Patent Act provides the statutory basis for an obviousness rejection and reads as follows:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Courts have interpreted 35 U.S.C. § 103(a) as a question of law based on underlying facts. As the Federal Circuit stated:

> Obviousness is ultimately a determination of law based on underlying determinations of fact. These underlying factual determinations include: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) the extent of any proffered objective indicia of nonobviousness.

Monarch Knitting Mach. Corp. v. Sulzer Morat GmBH, 45 U.S.P.Q.2d (BNA) 1977, 1981 (Fed. Cir. 1998) (internal citations omitted).

Once the scope of the prior art is ascertained, the content of the prior art must be properly combined. "Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demand known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. See In re Kahn, 441 F. 3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness")." KSR Int'l v. Teleflex, Inc., 550 U.S. 398, 418, 82 U.S.P.Q.2d 1385, 1396 (2007).

Moreover, if the proposed combination would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. MPEP § 2143.01.V; see also Tec-Air, Inc. v. Denso Mfg. Michigan Inc., 52 U.S.P.Q.2d 194, 1298 (Fed, Cir. 1999) (quoting In re Sponnoble, 160 U.S.P.Q. 237, 244 (C.C.P.A. 1969)). Likewise, if the proposed combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. MPEP § 2143.01.VI.

While the Patent Office is entitled to give claim terms their broadest reasonable interpretation, this interpretation is limited by a number of factors. First, the interpretation must be consistent with the specification. In re Hyatt, 211 F.3d 1367, 1372 (Fed. Cir. 2000); MPEP § 2111. Second, the broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. In re Cortright, 165 F.3d 1353, 1359, (Fed. Cir. 1999); MPEP § 2111. Finally, the interpretation must be reasonable. In re Am. Acad.

of Sci. Tech. Ctr., 367 F.3d 1359, 1369 (Fed. Cir. 2004); MPEP § 2111.01. This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. In re Zletz, 893 F.2d 319, 321 (Fed. Cir. 1989).

After the combination has been made, in order to establish *prima facie* obviousness, "[a]ll words in a claim must be considered" and all limitations must be taught or suggested by the prior art. MPEP § 2143.03, In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). f a claim element is missing after the combination is made, then the combination does not render obvious the claimed invention, and the claims are allowable. As stated by the Federal Circuit, "[if] the PTO fails to meet this burden, then the applicant is entitled to the patent." In re Glaug, 283 F.3d 1335, 1338 (Fed. Cir. 2002).

D. Claims 1-4, 8, 11, 12, 17-21, 28, and 29 are Patentable over O'Neill and Clapp

Claims 1-4, 8, 11, 12, 17-21, 28, and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Neill in view of Clapp. In order to establish *prima facie* obviousness, "[a]ll words in a claim must be considered" and all limitations must be taught or suggested by the prior art. MPEP § 2143.03, In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

1. O'Neill and Clapp Fail to Disclose or Suggest a "Pedestal Base"

Independent claims 1, 17, and 28 all recite "a pedestal base" and "a housing positioned over the pedestal base." Neither O'Neill nor Clapp, either alone or in combination, can be considered to include a "pedestal base" with a "housing positioned over the pedestal base" as recited in the claims. The claimed pedestal base is also described in paragraph 0025 of the Specification:

> A housing 28 is positioned over a conventional pedestal base 30 or onto a similar base incorporated into a below-grade vault or hand hole. The base 30 shown defines an integral stake feature 32 and is self-supporting. However, the base 30 and housing 28 may also be stake-mounted on the ground or pole-mounted above the ground.

The pedestal base of the claimed invention is shown, by example, in Figure 1, as reproduced below:

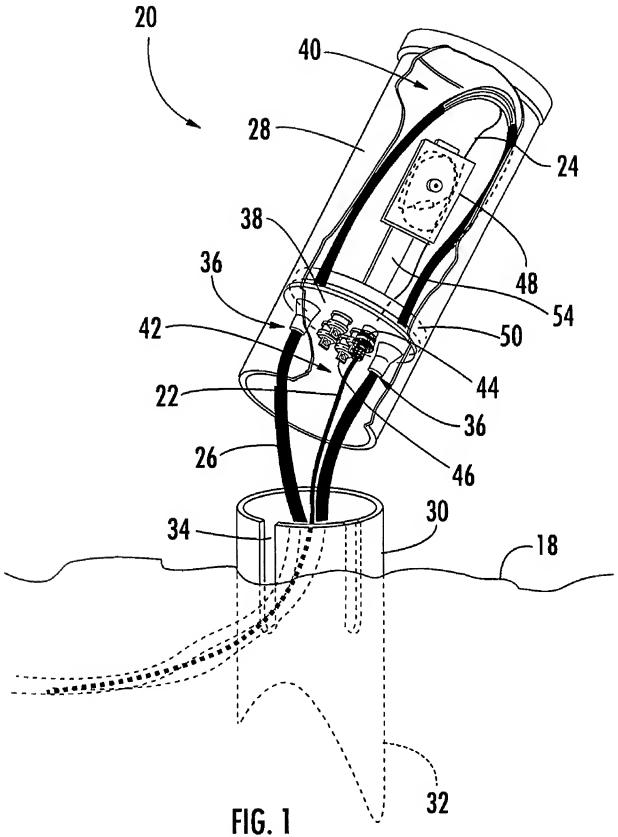
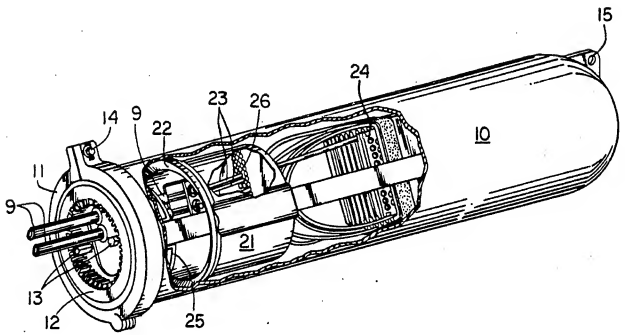


FIG. 1

O'Neill fails to disclose any structure that can be considered a pedestal base as required by the claims. Page 2 of the Office Action mailed on July 22, 2009 points to elements 12, 21, and 24 as providing the "pedestal base" of the claims, as best as Appellant can discern. As shown in Figure 1 of O'Neill, reproduced below, O'Neill does disclose a "[c]ontainer 10 [that] is closed by end cap 12." O'Neill, col. 2, ll. 33-34. "In use, brim 22 is in contact with the interior surface of container 10 to form a seal." O'Neill, col. 2, ll. 38-39. However, the "end cap 12" is not a pedestal base. The container 10 in O'Neill completely surrounds the end cap 12 with the lower edge of the end cap 12 being flush with the lower end of the container 10. Accordingly, the end cap 12 and brim 22 of O'Neill serve to seal the end of the container 10. The "end cap 12" of O'Neill is not disclosed as supporting the "container 10" or configured to be disposed in the ground to provide a pedestal base for the "container 10." The end cap 12 is thus not a "pedestal" base designed to provide support for the claimed "housing positioned over the pedestal base."



Further, the container 10 of O'Neill does hold a "splice tray 24." O'Neill, col. 2, ll. 32-33. "Also mounted in container 10 is silicone rubber vessel 21." O'Neill, col. 2, ll. 35-36. Neither the vessel 21 nor the splice tray 24 of O'Neill is a "pedestal" base designed to provide support for the claimed "housing positioned over the pedestal base," as recited in the claimed invention.

Moreover, Clapp also fails to disclose or suggest a pedestal base. Clapp discloses a housing 39 with an end cap 21. Clapp, col. 3, ll. 33-35; see also Figures 1 and 2. The end cap 21 of Clapp is similar to the end cap 12 of O'Neill and thus cannot be considered a pedestal base for the same reasons discussed above with respect to O'Neill.

Accordingly, neither O'Neill nor Clapp, alone or in combination, teaches or suggests the "pedestal base" set forth in independent claims 1, 17, and 28. Claims 1, 17, and 28 are thus patentable.

2. O'Neill and Clapp Fail to Disclose or Suggest a "Plate Secured to One of the Housing and the Pedestal Base and Operable for Separating the Interior Cavity Into a First Compartment Disposed Within the Housing and a Second Compartment Disposed Within the Housing"

O'Neill also fails to disclose "a plate secured to one of the housing and the pedestal base and operable for separating the interior cavity into a first compartment disposed within the housing and a second compartment disposed within the housing," as recited in claims 1, 17, and 28. Page 2 of the Office Action mailed July 22, 2009 equates element 26 of O'Neill to the claimed plate. O'Neill discloses that "light waveguides in buffer tubes 23 must proceed through the closed bottom of vessel 21," which "is facilitated by a series of circular areas 26 in the bottom of vessel 21 of reduced thickness." O'Neill, col. 2, ll. 42-46; see also Fig. 1. The circular areas 26 of O'Neill are merely areas of reduced thickness at the bottom of vessel 21, and thus do not comprise a plate.

Moreover, the circular areas 26 of O'Neill are not secured to the container 10 or the end cap 12, which the Office Action is reading as the claimed housing and pedestal base. The circular areas 26 of O'Neill thus cannot be the claimed plate for this additional reason.

Further, the circular areas 26 of O'Neill do not separate the interior cavity into a first compartment and a second compartment. In fact, O'Neill does not disclose anything that is

"operable for separating the interior cavity into a first compartment disposed within the housing and a second compartment disposed within the housing," as recited in claims 1, 17, and 28. O'Neill discloses that the "vessel 21 will be filled up to surface 25 with an encapsulant which is a gel preventing access of water to splice tray 24; however, the encapsulant is omitted from the drawings in order for the interior of the splice closure to be viewed." O'Neill, col. 2, ll. 52-57. Just because the vessel 21 is filled up to surface 25 does not mean that O'Neill discloses a plate that separates the interior cavity into a first compartment and second compartment, with both the first compartment and second compartment being disposed in the housing. The vessel 21 is a "unitary vessel." O'Neill, col. 1, l. 58. Thus, the vessel 21 in O'Neill is not separated into two compartments. Neither is the container 10 in O'Neill separated into two compartments by a plate. Accordingly, O'Neill does not teach or suggest "a plate secured to one of the housing and the pedestal base and operable for separating the interior cavity into a first compartment disposed within the housing and a second compartment disposed within the housing," as recited in claims 1, 17, and 28.

Clapp also does not teach or suggest "a plate secured to one of the housing and the pedestal base and operable for separating the interior cavity into a first compartment disposed within the housing and a second compartment disposed within the housing," as recited in claims 1, 17, and 28. Clapp discloses a splice closure that "includes a frame 13," which "has two side plates 15 that are spaced apart from each other, leaving a central cavity between them for receiving express fiber tubes." Clapp, col. 2, ll. 41-45. "Two forward end brackets 19 extend from side plates 15 for fastening an end cap 21 to the frame 13. End cap 21 is a cylindrical member having a plurality of apertures 23 for receiving fiber optic cables." Clapp, col. 2, ll. 52-56. The end cap 21 in Clapp is not a "plate" that separates an "interior cavity into a first compartment ... and a second compartment," as recited in claim 1. This is clear since Clapp discloses that a "housing 39 will slide over frame 13 and fasten to end cap 21, thereby enclosing main splice tray 17." Clapp, col. 3, ll. 33-35; see also Figs. 1 and 2. The end cap 21 in Clapp is fastened to the end of the housing 39 to seal the housing 39 and thus does not separate the interior of the housing "into a first compartment disposed within the housing and a second compartment disposed within the housing," as recited in claims 1, 17, and 28. Clapp does not disclose separate compartments within the housing.

Accordingly, neither O'Neill nor Clapp, alone or in combination, teaches or suggests "a plate secured to one of the housing and the pedestal base and operable for separating the interior cavity into a first compartment disposed within the housing and a second compartment disposed within the housing," as set forth in independent claims 1, 17, and 28. Claims 1, 17, and 28 are thus patentable for this additional reason.

Claims 2-4, 8, 11, 12, 18-21, and 39 depend directly or indirectly from one of claims 1, 17, or 28. As discussed above, the combination of O'Neill and Clapp does not teach or suggest all features in independent claims 1, 17, and 28, the base claims from which claims 2-4, 8, 11, 12, 18-21, and 39 depend. Thus, claims 2-4, 8, 11, 12, 18-21, and 39 are also patentable based on their dependency from their respective independent claim.

3. Claim 8 is Separately Patentable Because O'Neill and Clapp Fail to Disclose or Suggest a "Plate Having at Least One Connector Port Mounted Thereon"

As set forth above, neither O'Neill nor Clapp, alone or in combination, teaches or suggests the claimed plate of claims 1, 17, and 28. Claim 8 further defines the claimed plate of the invention. In particular, claim 8 recites "wherein the plate comprises a mounting plate having at least one connector port mounted thereon." Page 4 of the Office Action mailed July 22, 2009 equates element 26 of O'Neill to the claimed plate of claim 8. Appellant respectfully disagrees. O'Neill discloses that "light waveguides in buffer tubes 23 must proceed through the closed bottom of vessel 21," which "is facilitated by a series of circular areas 26 in the bottom of vessel 21 of reduced thickness." O'Neill, col. 2, ll. 42-46; see also Fig. 1. However, there is no connector port mounted on the circular areas 26 of O'Neill. O'Neill, Fig. 1. Thus, O'Neill fails to disclose "a mounting plate having at least one connector port mounted thereon," as recited in claim 8. The Office Action does not allege that Clapp teaches "a mounting plate having at least one connector port mounted thereon," as recited in claim 8. Claim 8 is thus patentable for this additional reason.

E. Claims 7, 9, 10, 23, 24, and 31 are Patentable over O'Neill, Clapp & Saito

Claims 7, 9, 10, 23, 24, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Neill and Clapp in view of Saito. In order to establish *prima facie*

obviousness, "[a]ll words in a claim must be considered" and all limitations must be taught or suggested by the prior art. MPEP § 2143.03, In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Claims 7, 9, 10, 23, 24, and 31 depend directly or indirectly from one of claims 1, 17, or 28. As discussed above, the combination of O'Neill and Clapp does not teach or suggest all features in independent claims 1, 17, and 28, the base claims from which claims 7, 9, 10, 23, 24, and 31 depend. Saito also fails to address the deficiencies of O'Neill and Clapp. Saito discloses a "pre-connectorized loose tube cable." Saito, Abstract. The pre-connectorized loose tube cable of Saito fails to include any structure that can be considered a "pedestal base" as set forth in claims 1, 17, and 28. Saito also does not teach or suggest "a plate secured to one of the housing and the pedestal base and operable for separating the interior cavity into a first compartment disposed within the housing and a second compartment disposed within the housing." Thus, neither O'Neill, Clapp, nor Saito, alone or in combination, teach or suggest each and every limitation set forth in independent claims 1, 17, and 28. Accordingly, claims 7, 9, 10, 23, 24, and 31, which depend from one of claims 1, 17, or 28, are also patentable.

In addition, claims 23, 24, and 31 all recite "wherein the means for interconnecting comprises at least one connector port mounted on the plate." As discussed above with respect to claim 8, O'Neill fails to disclose a connector port mounted on the plate. Page 4 of the Office Action mailed July 22, 2009 equates element 26 of O'Neill to the claimed plate of claim 8. O'Neill discloses that "light waveguides in buffer tubes 23 must proceed through the closed bottom of vessel 21," which "is facilitated by a series of circular areas 26 in the bottom of vessel 21 of reduced thickness." O'Neill, col. 2, ll. 42-46; see also Fig. 1. However, there is no connector port mounted on the circular areas 26 of O'Neill. O'Neill, Fig. 1. Thus, O'Neill fails to disclose "at least one connector port mounted on the plate," as recited in claims 23, 24, and 31. The Office Action does not allege that Clapp or Saito teaches "at least one connector port mounted on the plate," as recited in claims 23, 24, and 31. Claims 23, 24, and 31 are thus patentable for this additional reason.

F. Conclusion

As set forth above, all of the elements of the pending claims are not shown in the prior art with sufficient particularity to sustain an obviousness rejection. In particular, neither O'Neill,

Clapp, nor Saito, alone or in combination, can be considered to include a "pedestal base" with a "housing positioned over the pedestal base" as recited in independent claims 1, 17, and 28. In addition, O'Neill, Clapp, and Saito, alone or in combination, fail to disclose or suggest "a plate secured to one of the housing and the pedestal base and operable for separating the interior cavity into a first compartment disposed within the housing and a second compartment disposed within the housing," as recited in claims 1, 17, and 28.

Further, the Office Actions have failed to establish how the prior art discloses all the features recited in certain dependent claims. For example, claim 8 recites "wherein the plate comprises a mounting plate having at least one connector port mounted thereon." Claim 23, 24, and 31 all recite "wherein the means for interconnecting comprises at least one connector port mounted on the plate." None of the cited references teaches a connector port mounted on a plate. Thus, these claims are separately patentable.

As such, Appellant requests that the Board reverse the Examiner and instruct the Examiner to allow the claims for these reasons along with the reasons noted above.

Respectfully submitted,

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(8) CLAIMS APPENDIX

1. An optical termination pedestal defining an interior cavity and comprising:

a pedestal base;

a housing positioned over the pedestal base;

a distribution cable received within the interior cavity;

at least one drop cable received within the interior cavity;

a plate secured to one of the housing and the pedestal base and operable for separating the interior cavity into a first compartment disposed within the housing and a second compartment disposed within the housing, wherein the first compartment and the second compartment are substantially free of a gel encapsulant material; and

a means for interconnecting at least one optical fiber of the distribution cable to at least one optical fiber of the drop cable, wherein the means for interconnecting is provided in the first compartment.

2. An optical termination pedestal according to claim 1, wherein the plate has at least one cable port for routing the distribution cable into and out of the first compartment.

3. An optical termination pedestal according to claim 2, wherein the at least one optical fiber of the distribution cable is spliced to the at least one optical fiber of the drop cable in the first compartment.

4. An optical termination pedestal according to claim 3 wherein the means for interconnecting comprises at least one splice tray.

5-6. (Cancelled).

7. An optical termination pedestal according to claim 2, wherein the optical fiber of the distribution cable is terminated and connectorized in the first compartment and the drop cable is pre-connectorized.

8. An optical termination pedestal according to claim 2, wherein the plate comprises a mounting plate having at least one connector port mounted thereon and wherein the optical fiber of the distribution cable is optically connected to connector port in the first compartment and the drop cable is optically connected to the connector port in the second compartment.

9. An optical termination pedestal according to claim 8, wherein the optical fiber of the distribution cable is terminated and connectorized in the first compartment and the drop cable is pre-connectorized.

10. An optical termination pedestal according to claim 8, wherein the optical fiber of the distribution cable is terminated and spliced to a pigtail in the first compartment and the drop cable is pre-connectorized.

11. An optical termination pedestal according to claim 1, wherein the plate comprises a seal adjacent an interior wall of the housing for substantially sealing the first compartment relative to the second compartment.

12. An optical termination pedestal according to claim 1, wherein the second compartment creates a bell jar effect when the housing is positioned over the pedestal base to further seal the interior cavity relative to the ambient atmosphere.

13-16. (Cancelled).

17. An optical termination pedestal defining an interior cavity for interconnecting at least one terminated optical fiber of a distribution a cable with at least one optical fiber of a fiber optic drop cable, the pedestal comprising:

a pedestal base;

a housing positioned over the pedestal base;

a distribution cable received within the interior cavity;

at least one drop cable received within the interior cavity; and

a plate secured to one of the housing and the pedestal base and operable for separating the interior cavity into a first compartment disposed within the housing and a second compartment disposed within the housing, wherein the first compartment and the second compartment are substantially free of a gel encapsulant material.

18. An optical termination pedestal according to claim 17, wherein the plate is provided with a seal adjacent an interior wall of the housing to substantially seal the first compartment relative to the second compartment.

19. An optical termination pedestal according to claim 17, wherein the second compartment creates a bell jar effect when the housing is positioned over the pedestal base to further seal the interior cavity relative to the ambient atmosphere.

20. An optical termination pedestal according to claim 17, wherein the plate has at least one cable port for routing the distribution cable into and out of the first compartment and wherein the pedestal further comprises means for interconnecting the at least one terminated optical fiber of the distribution cable and the at least one optical fiber of the drop cable.

21. An optical termination pedestal according to claim 20, wherein the means for interconnecting comprises at least one splice tray and wherein the at least one terminated optical fiber of the distribution cable is spliced to the at least one optical fiber of the drop cable within the splice tray in the first compartment.

22. (Cancelled).

23. An optical termination pedestal according to claim 20, wherein the means for interconnecting comprises at least one connector port mounted on the plate and wherein the at least one terminated optical fiber of the distribution cable is connectorized and routed to the at least one connector port in the first compartment.

24. An optical termination pedestal according to claim 20, wherein the at least one terminated

optical fiber of the distribution cable is connectorized, wherein the at least one optical fiber of the drop cable is connectorized, wherein the means for interconnecting comprises at least one connector port mounted on the plate, and wherein the terminated and connectorized optical fiber of the distribution cable is optically connected to the connectorized optical fiber of the drop cable through the at least one connector port.

25. (Cancelled).

28. An optical termination pedestal for use at a branch point in a fiber optic communications network, the pedestal defining an interior cavity and comprising:

a pedestal base;

a housing positioned over the pedestal base;

a plate secured to one of the housing and the pedestal base and operable for separating the interior cavity into a first compartment disposed within the housing and a second compartment disposed within the housing, the plate having at least one cable port for routing a distribution cable into and out of the first compartment and wherein the first compartment and the second compartment are substantially free of a gel encapsulant material; and

a means for interconnecting a terminated optical fiber of the distribution cable and an optical fiber of a drop cable in one of the first compartment and the second compartment;

wherein the plate creates a splice closure within the pedestal without the use of a separate enclosure.

29. An optical termination pedestal according to claim 28, wherein the means for interconnecting comprises at least one splice tray and wherein the terminated optical fiber of the distribution cable is spliced to the optical fiber of the drop cable within the at least one splice tray in the first compartment.

30. (Cancelled).

31. An optical termination pedestal according to claim 28, wherein the means for interconnecting comprises at least one connector port mounted on the plate, the terminated

optical fiber of the distribution cable and the optical fiber of the drop cable are connectorized, and wherein the terminated and connectorized optical fiber of the distribution cable is optically connected in the first compartment to the connectorized optical fiber of the drop cable in the second compartment through the at least one connector port.

(9) EVIDENCE APPENDIX

Appellant relies on no evidence, thus this appendix is not applicable.

(10) RELATED PROCEEDINGS APPENDIX

As there are no related proceedings, this appendix is not applicable.